

KASOWITZ, BENSON, TORRES & FRIEDMAN, LLP
MARCUS S. TOPEL (SBN 54702)
mtopel@kasowitz.com
WILLIAM M. GOODMAN (SBN 61305)
wgoodman@kasowitz.com
101 California Street, Suite 2050
San Francisco, California 94111
Telephone: (415) 421-6140
Facsimile: (415) 398-5030

Attorneys for
W. SCOTT HARKONEN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

INTERMUNE, INC.,

Defendant.

Case No. CR 08-0164 MHP

**DECLARATION OF TANIA M.
MORTENSEN IN SUPPORT OF
HARKONEN'S *EX PARTE*
APPLICATION TO FILE DOCUMENTS
UNDER SEAL PURSUANT TO LOCAL
RULES 79-5 AND 7-10**

**Judge: Hon. Marilyn Hall Patel
Dept.: 15**

I, Tania M. Mortensen, make the following declaration:

1. I am an attorney in good standing with the State Bar of California, and an
associate at the law firm of Kasowitz, Benson, Torres & Friedman, LLP, counsel of record for
defendant W. Scott Harkonen ("Harkonen") in the above-captioned matter. I have personal
knowledge of the facts stated herein and would testify competently thereto if called upon to do
so.

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2. Attached hereto as Exhibit A is a true and correct copy of the signed Stipulation and Superseding Protective Order ("the Protective Order") entered by the Court in this matter on June 10, 2008. The Protective Order designates certain discovery materials "Confidential" and requires defense counsel to file Acknowledgement forms *ex parte* and under seal prior to providing such materials to a non-party service provider in connection with the preparation of a defense.

3. Counsel for Harkonen wishes to utilize the services of a non-party in connection with the preparation of Harkonen's defense in this matter. Such services will include review of materials designated "Confidential" pursuant to the terms of the Protective Order.

4. True and correct signed copies of "Acknowledgement of Protective Order and Proper Handling of Materials Subject Thereto" forms received from the non-party service provider referenced above have been lodged with the clerk pursuant to Local Rule 79-5. Pursuant to the Protective Order, those signed forms must be filed confidentially under seal, with no access provided to the government.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this Declaration was executed in San Francisco, California, on this 22nd day of August, 2008.



TANIA M. MORTENSEN

EXHIBIT A

BRIAN J. STRETCH (CABN 163973)
Acting United States Attorney

IOANA PETROU (CABN 170834)
JONATHAN D. SCHMIDT (CABN 230646)
Assistant United States Attorneys

450 Golden Gate Avenue, Box 36055
San Francisco, California 94102
Telephone: (415) 436-7189
Facsimile: (415) 436-7234
ioana.petrou@usdoj.gov
jonathan.schmidt@usdoj.gov

SONDRA L. MILLS (DCBN 367463)
ALLAN GORDUS (MOBN 48210)
Trial Attorneys

DOJ Office of Consumer Litigation
Liberty Square Building
450 5th Street, NW, Sixth Floor South
Telephone: (202) 616-2375
FAX: (202) 514-8742
sondra.mills@usdoj.gov
allan.gordus@usdoj.gov

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	CR No. 08-0164 MHP
Plaintiff,)	STIPULATION AND PROPOSED
v.)	SUPERSEDING PROTECTIVE ORDER
W. SCOTT HARKONEN,)	
Defendant.)	

Defendant W. Scott Harkonen is charged with violations of Title 18, United States Code, Sections 1343 and 2 – wire fraud and aiding, and Title 21, United States Code, Sections 21 U.S.C. §§ 331(k), 333(a)(2) and 352(a) – doing acts, with intent to defraud and mislead, resulting in drugs being misbranded while held for sale following shipment in interstate commerce. More

1 specifically, the drug at issue is Actimmune and the conduct at issue took place when the
2 Defendant was employed by InterMune, Inc.

3 The Court has previously issued a protective order relating to discovery containing certain
4 individually identifiable health information (defined as health information that is connected to a
5 patient's name, address, Social Security number or other identifying number, including HIC
6 number) on 23, 2008.

7 At this time, the parties jointly seek a superseding protective order to include not only
8 discovery containing certain individually identifiable health information but also confidential
9 business, financial, proprietary, or other confidential information of third parties, including
10 InterMune, Inc., submitted to the United States Food and Drug Administration ("FDA") related
11 to drug applications and other filings and communications.

12 To expedite the production of discovery material and to adequately protect the
13 information provided health information and information provided to the FDA, the parties agree
14 and stipulate that materials containing financial, proprietary, or other confidential information of
15 a third party, InterMune, Inc., submitted to or in the possession of the United States Food and
16 Drug Administration ("FDA") or any material containing certain individually identifiable health
17 information will be handled in accordance with the conditions set forth below. In order to protect
18 the confidentiality of this information, and with the stipulation of the parties, the government
19 asks the Court to enter the following protective order:

20 1. The parties agree that to designate "confidential" material covered by this
21 agreement, the United States shall so designate, on the material itself, on a diskette cover, or in
22 an accompanying cover letter, by using the following designation: "CONFIDENTIAL
23 INFORMATION – SUBJECT TO PROTECTIVE AGREEMENT."

24 2. Counsel shall narrowly tailor the documents, materials, or papers that come within
25 this order.

26 3. The failure to designate any materials as provided in this paragraph shall not
27 constitute a waiver of any assertion that the materials are covered by this Protective Agreement

28 4. The defendant, including defendant's counsel and their personnel, agree to use

1 these materials only for the purposes of this criminal action, and agree not to disclose these
2 materials to non-parties except as needed for the defense of this criminal action, and only if the
3 nonparty signs this letter, or another copy of this letter, which will be subsequently provided to
4 counsel for the United States. If defense counsel wishes to utilize the services of any non-party,
5 including but not limited to an investigator, expert or other individual to review the protected
6 materials in connection with the preparation of a defense, prior to receiving access to the
7 materials such individual must sign a copy of the "Acknowledgment of Protective Order and
8 Proper Handling of Materials Subject Thereto" attached to a copy of this Order acknowledging
9 that:

- 10 a) he/she has reviewed the Order;
- 11 b) he/she understand its contents;
- 12 c) he/she agrees that he/she will only access the protected materials for the
13 purposes of preparing the defense case;
- 14 d) he/she will not make any copies of any of the protected materials without
15 further order of the Court; and
- 16 e) he/she understands that failure to abide by this Order may result in
17 sanctions by this Court.

18 Defense counsel shall promptly file signed copies of the Order along with the signed
19 Acknowledgment of Protective Order and Proper Handling of Materials Subject Thereto Order,
20 ex parte and under seal. The government shall have no access to these signed copies without
21 further order of the Court.

22 5. As applied to documents, materials, or papers filed with the court, this order shall
23 be used sparingly to cover only those items that are clearly trade secret, come within clearly
24 defined areas of privileges or confidentiality accepted in the federal courts, or have a compelling
25 need for confidentiality.

26 6. Documents, material or papers submitted as exhibits to or in support of motions or
27 for pretrial, trial or other court proceedings shall not be filed under seal except by order of the
28 court. Documents, materials or other papers submitted as exhibits will remain as part of the

1 court record and may not be withdrawn without order of the court.

2 7. The parties agree that the procedures for use of designated confidential documents
3 during any hearing or the trial of this matter shall be determined by the parties and the Court in
4 advance of the hearing or trial. The parties agree to consider redacting confidential documents,
5 request the Court to submit such documents under seal, code the documents to protect
6 confidential information, request that any exhibit be placed under seal, or assure that all
7 confidential information has been removed.

8 No party shall disclose designated confidential documents in open Court without prior
9 consideration by the Court.

10 5. Within 30 days of any judgment and sentencing, defendant shall return these
11 confidential documents and all copies, as well as notes, memoranda, summaries, or other
12 documents containing information from the designated confidential documents, to counsel for the
13 United States, or shall destroy these documents and certify in writing to counsel for the United
14 States that the documents have been destroyed. If defendant believes that he must maintain the

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SUPERSEDING PROTECTIVE ORDER - CR 08-0164 MIIP

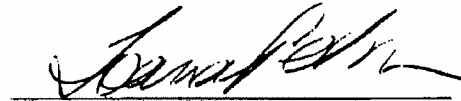
1 protected material for any reason related to appeal, defendant must seek authorization from the
2 Court within 30 days of the sentencing and judgment in this matter.

3 SO STIPULATED

4
5 DATED: 6/2/08

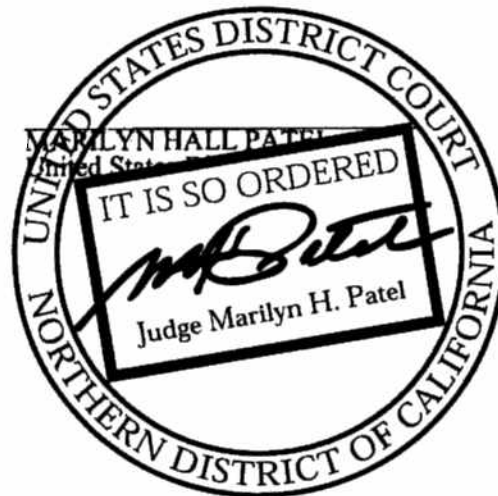

WILLIAM M. GOODMAN
Attorney for Defendant Harkonen

7
8 DATED: 6/2/08


IOANA PETROU
Assistant United States Attorney

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12 IT IS ORDERED that disclosure of the above-described discovery materials shall be
13 restricted as set forth above and that this Order supersedes and takes the place of the Stipulated
14 Protective Order dated 23, 2008.

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16 DATED: 6/10/2008



Acknowledgment of Protective Order and Proper Handling of Materials Subject Thereto

I _____ am employed as a(n) _____ and I am assisting _____
_____ (attorney) in the preparation of the defense of W. Scott Harkonen.

In anticipation of reviewing materials that contain individually identifiable health information, I have reviewed the attached Order. I understand its contents. I agree that I will only access the protected materials for the purposes of preparing the defense case. I will not make any copies of any of the protected materials without further order of the Court. I understand that failure to abide by this Order may result in sanctions by this Court.